

INQUIRY ON ATTICA SCORES GOVERNOR OVER 1971 REVOLT

Report Says He Should Have
Visited Site Before Order
Was Given for Assault

RIOT HELD UNPLANNED

Group Finds Inmates Were
Organized Spontaneously
in Captured Prison Yard

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The New York State Special Commission on Attica concluded in its final report released yesterday that Governor Rockefeller should have gone to the upstate prison before ordering an armed assault on rebel inmates.

This determination, as well as a variety of others on the origins, development and aftermath of the uprising, was conveyed by the commission in its 518-page report issued to coincide with today's anniversary.

Excerpts from the commission report are on Page 34.

of the assault, in which 30 inmates and 10 hostages died. Over-all, 11 prison employees and 32 inmates lost their lives as a result of the uprising, the bloodiest in American prison history.

In addition to the view of the Governor's decision not to go to Attica, a point that the commission regarded as tending "to overshadow all other issues of public debate," the report, adopted unanimously by the nine members, made the following judgments:

"The eruption of violence by inmates was not planned, but occurred spontaneously. Like the disturbances in the 1960's, it 'was the product of frustrated hopes and unfulfilled expectations after efforts to bring meaningful change had failed.'"

"The highly organized inmate society in the captured prison yard also developed spontaneously.

"There appeared to be no plan for dealing with riots or drills by the custodial staff at Attica prior to last September.

"Negotiating efforts by a citizens committee were not planned but evolved when sufficient state forces could not be massed at the prison during the first day.

"Once negotiations began, no effective mechanisms were worked out either by the inmates, who refused to delegate responsibility, or by the citizens committee, whose role was never defined.

"Coverage of the negotiations by the media created an 'air of unreality' and encouraged rhetoric rather than reasonable dialogue.

"The assault plan itself was faulty since it could not have saved hostage lives if inmates were in fact set on killing.

"No nonlethal weaponry was available to the state police and the guns and ammunition used were such that they made inevitable the deaths and injuries of innocent people.

"There was no unified command responsible for coordinating the assault and the various state agencies involved. There was no prior planning for medical attention and rehousing of inmates.

"Despite the inmates' frequently expressed fear of reprisals, following the five-day uprising officials took no effective steps to prevent such reprisals, which did take place.

The commission's most direct criticism of the inmates said it "condemns the taking of hostages as a means of bringing about changes in society, even

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where peaceful efforts at reform have failed."

The commission, selected last Sept. 30 by a panel of the state's ranking judges, was charged by Governor Rockefeller with conducting "a full and impartial investigation" of the events surrounding the rebellion and making "a complete report to the public."

To that end, the commissioners and a staff headed by Arthur Liman, the general counsel, interviewed more than 3,000 inmates, correctional employees, state troopers, National Guard troops and the townspeople of Attica.

From the outset of its inquiry, the group, generally known as the McKay Commission after its chairman, Robert B. McKay, the dean of New York University Law School, was beset by problems that stemmed from what some considered the ambiguous sources of its power.

There were groups claiming to represent inmates who refused to cooperate with the commission, prejudging its work as a "whitewash." They said that since the commission was ultimately a creation of the Governor, it would not have unlimited independence.

Furthermore, there has been continuous friction between the McKay group and the staff of Robert E. Fischer, the deputy attorney general who has been conducting an investigation of wrongdoing at Attica, under a separate executive mandate.

Records Are Subpoenaed

Last May, Mr. Fischer's panel sought to prevent the McKay Commission from holding televised public hearings on the ground that this would jeopardize his efforts. And last week, Mr. Fischer subpoenaed the records of confidential interviews now in the possession of the McKay panel.

Mr. Liman is seeking to quash this subpoena on the ground that earlier assurances were given that such material would be kept from prosecutors.

In light of this, special attention has been focused on those aspects of the report dealing with the Governor's actions. During the public hearing phase of its inquiry, the commission released the transcript of its questioning of the Governor and his staff.

At that time, Mr. Rockefeller declared that he had rejected the requests of his aides that

he journey to Attica because "I was trying to do the best I could to save the hostages, save the prisoners, restore order, and preserve our system without undertaking actions which could set a precedent which would go across the country like wildfire."

The commission report, which was agreed to unanimously after a section-by-section discussion involving the nine commissioners, emphasized that the decision facing the Governor was a very difficult one. But the report added:

"The commission nevertheless believes that conditions made it appropriate for the Governor to go to Attica. At the time of the uprising, the Governor realized that the prison system had long been neglected and was in need of major reform."

Amnesty Stand Backed

The commission agreed generally with the Governor's view that he could not and should not guarantee amnesty for major criminal acts, though it noted that the possibility of amnesty for less serious acts had not been sufficiently explored by anyone.

But even conceding that the probability of settlement without amnesty was virtually nonexistent, the commission said it believed "that the presence of the Governor would have had a stabilizing effect on the troopers and correction officers taking part in the assault and rehousing of inmates."

"In summary," this section of the report said, "the Governor should have gone to Attica, not as a matter of duress or because the inmates demanded his presence, but because his responsibilities as the state's chief executive made it appropriate that he be present at the scene of the critical decision involving great risk of loss of life, after [Correction] Commissioner [Russell G.] Oswald had requested him to come."

The Governor yesterday issued a three-paragraph statement in which he expressed his "appreciation" to the commission for what he called "this monumental job of investigating and reporting." The Governor's statement said the report "will help in understanding the problems and events leading up to and during the rebellion at Attica," which, he said, was essential "to carrying out our programs for improving our system of criminal justice."

A spokesman for the Governor

said that this congratulatory statement would be the sum of Mr. Rockefeller's comments and that he would not address himself to the specifics of the report inasmuch as his earlier statements had been widely disseminated by the commission.

Meanwhile in Albany, Mr. Oswald said at a news conference that since there could have been no giving in on the amnesty issue the journey of the Governor to Attica "would have accomplished nothing." Last May, under questioning by the commission, Mr. Oswald said he had urged the Governor to visit the prison although, he said, he did not feel such a visit would be productive.

The commission's report has been published in soft cover by Bantam Books and will be commercially available starting today. A hard-cover edition will be published later by Praeger.

To accompany the written report, the commission has prepared a 90-minute television presentation of police films and excerpts from hearings that will be shown nationally tonight on the National Educational Television network.

The members of the commission, in addition to Dean McKay, were: the Most Rev. Edwin B. Broderick, Roman Catholic Bishop of Albany; Robert L. Carter, member of a New York City law firm; Mrs. Amalia R. Guerrero, president of the Society of Friends of Puerto Rico; Amos Henix, a former inmate and executive director of Reality House; Burke Marshall, deputy dean of Yale University Law School; Walter Rothschild, chairman of New York Urban Coalition; Mrs. Dorothy Wadsworth, involved in community projects in Rochester, and William Wilbanks, graduate student in criminal justice.